

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF UTAH, IN AND FOR UTAH COUNTY.

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Provo Reservoir Company,	:	(No. 2888 Civil)
a corporation,	:	
Plaintiff.	:	Answer, counterclaim, and cross-
vs.	:	complaint of Utah Power and Light
	:	Company, a corporation.
Provo City, et al.,	:	
Defendants.	:	
.....	:	

Now comes the defendant Utah Power and Light Company, a corporation, and by leave of court and stipulation of counsel first had and obtained, answers the complaint of the plaintiff herein, and admits, denies and avers, as follows, to wit:

I.

This defendant admits the allegations in plaintiff's complaint contained, of paragraphs numbered 1 to 27, both inclusive, and paragraph numbered 37.

II.

That this defendant has no knowledge, information, or belief sufficient to enable it to answer any or either of the allegations in paragraphs numbered 28, 29, 29(a), 29(b), 29(c), 29(d), 29(e), 30, 31, 32, 33, 38 and 39, in plaintiff's complaint contained and therefore, it denies each and every allegation of the same.

Further answering the complaint of the plaintiff and by way of counterclaim against the plaintiff, and for cross-complaint against each and all of the defendants, this defendant alleges and shows to the Court:

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This defendant adopts and alleges as a part of its counterclaim against the plaintiff and cross-complaint, as to each and all of the defendants, each and every allegation, contained within paragraphs numbered 1 to 26, both numbers inclusive, of plaintiff's complaint, herein, the same as if here set

forth in full.

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That this defendant is a corporation duly created, and existing under the laws of the State of Maine and by its charter and by full compliance with the laws of the State of Utah, is authorized and empowered to engage in the business of generating, using, and selling of electrical power; to construct and acquire by purchase, lease or otherwise, reservoirs, dams, canals, ditches, flumes, pipe lines, and such other works, plants, equipments, appliances and appurtenances as may be necessary, useful or appropriate for impounding, storing, conveying, distributing, and utilizing water for power, irrigation, fire, sanitary, domestic, manufacturing, and other uses, and to use, apply, sell, and otherwise dispose of water for such uses in the State of Utah and elsewhere.

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That in pursuance of its said powers and authority, it has acquired in various parts of the State of Utah, water rights, rights-of-way, conduits, flumes and ways, power plants, generating stations, and transmission lines, and that since the year 1897, it and its predecessors in interest have continuously engaged in the business of generating electrical energy for sale and furnishing to various cities and towns and the inhabitants thereof, and to mines, smelters and various manufacturing institutions, in the State of Utah and elsewhere, electrical energy for light, heat, and power, including power for irrigation purposes, and for other beneficial uses.

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That during the years 1894 to 1897, inclusive, the predecessors in interest of this defendant, appropriated for power purposes, and by means of a dam constructed across Provo River approximately four miles above the intake of the plaintiff's Canal, and approximately six miles above the intake of the canals of the several water users in Utah County, defendants in this action, and by means of conduit and flume this defendant and its predecessors have diverted and conveyed three hundred ^{about four to five} second feet of the water of said Provo River to the generating station of this defendant, at the mouth of Provo Canyon and there utilized said water for the generating of electrical energy for the beneficial uses aforesaid and in effecting the objects and

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purposes of its organization.

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That during the year 1911 the predecessors in interest of this defendant appropriated for power purposes and by means of dam, conduit, and pipe line, constructed in said Wasatch County, approximately thirty-five miles above the mouth of Provo River, and above the intake of the several water users, defendants in this action, in Wasatch County, diverted and conveyed two hundred second feet of the water of said Provo River to the generating station of this defendant on Provo River in said Wasatch County, and there utilized the same for the generating of electrical energy for the beneficial uses aforesaid, and in effecting the objects and purposes of its organization.

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That on or about the year 1910, the predecessors in interest of this defendant, appropriated, for power purposes, and by means of dam, conduit and pipe line, constructed in Wasatch County, diverted and conveyed twenty-six second feet of the water of Snake Creek, a tributary of said Provo River, to the generating station of this defendant in Snake Creek Canyon in said Wasatch County, and there utilized the same for the generating of electrical energy for the beneficial uses aforesaid, and in effecting the objects and purposes of its organization.

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That in making said appropriations of the water of said Provo River as aforesaid, the plaintiff and its predecessors in interest fully complied with all the requirements of the laws of the State of Utah and have ever since continuously used, and this defendant now uses, said water thus appropriated for the beneficial purposes aforesaid.

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That during each calendar year the flow of said Provo River varies, according to the seasons, and generally there are two periods when the flow thereof is low or normal, and at such periods, and at all times when the flow of said river is low or normal, this defendant is required to divert all the waters of said river into its said conduits and flumes in order to successfully operate its said power stations and supply the needs of its patrons with electrical energy.

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That additional to the aforesaid appropriations and use of the waters of said river for supplying its patrons with electrical energy, this defendant and its predecessors in interest have lawfully appropriated and this defendant is now lawfully possessed of, and has acquired the right to use and now does use the waters of certain springs and streams of water arising in Provo Canyon below its said diverting dam hereinbefore described in Utah County, to wit:

All the waters of those certain springs arising in Section 33, Township 5 South of Range 3 East of S. L. M. in Utah County, commonly known as the "Johnson" or "Lower Guard Quarter" Springs; all the waters of those certain streams in said Provo Canyon, commonly known as Lost Creek, Guards Quarter Creek, Upper Falls, and Bridal Veil Falls, and the right to divert and conduct the same to its said power generating station at the mouth of Provo Canyon and there utilize said waters for generating electrical energy, and additional thereto this defendant has the right to the use of said Johnson Springs for irrigation and other beneficial purposes.

This defendant further alleges that its right of ownership and use to the waters of said Provo River and the sources thereof in Utah County as herein alleged, were settled and confirmed by decree of the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, made and entered on the 25th day of January, 1907, in that certain cause No. 957 wherein Provo City, a municipal corporation et. al. was plaintiff, and the Telluride Power and Transmission Company, et. al. were defendants, and that said decree has never been modified, vacated, nor appealed from.

That additional to the said appropriations and right to use the water of Provo River for power purposes as aforesaid, this defendant has acquired, is the owner, and entitled to the use of 6/21 second feet of the water of said Provo River for the irrigation of twenty acres of land, situate, lying and being in Section 34, Township 2 South of Range 5 East of S. L. B. & M. in Wasatch County, Utah, as the successor in interest of W. H. Walker and as decreed to him by the Fourth Judicial District Court of the State of Utah in and for Wasatch County, in that certain cause

wherein Edward Fullerton et. al. were plaintiffs and Wasatch Irrigation Company et. al. were defendants.

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That this defendant is also the owner of one third part, or 6.045 second feet, of all the water developed and flowing from the mouth of what is commonly known as the "Ontario Drain Tunnel" in Wasatch County, Utah, subject only to the right of the plaintiff herein to the use of said water under the terms of a certain written agreement of lease made between this defendant and the plaintiff, and this defendant claims the right to have said water, so owned by this defendant, commingle with the waters of Provo River and flow down the natural channel thereof and to recapture the same at its diverting dam in Utah County, and from thence convey said water through its said conduit and flume in Provo Canyon, and make use thereof for power irrigation, domestic and other beneficial purposes, as it may deem for its best advantage, subject only to the rights of the plaintiff under the terms of said written lease aforesaid.

-12 (a)-

That additional to the rights of this defendant in and to the one-third part of the water developed and flowing from the mouth of said "Ontario Drain Tunnel" as hereinbefore set forth, this defendant is the owner of the right to the use of all of the water developed and flowing from said tunnel for power purposes.

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That any rights of the plaintiff to the use of the waters of said Provo River and its sources, were inaugurated since and are subject to the ownership title, interests and rights of this defendant to the use of said waters as hereinbefore alleged and this defendant further avers that on the 20th day of October, 1909, the plaintiff herein entered into a certain agreement in writing with the predecessor in interest of this defendant, the Telluride Power Company, whereby and by the terms of which said contract, the plaintiff covenanted and agreed with the said Telluride Power Company that the latter could divert all water flowing down the Provo River to its said dam and convey the same through its conduits to its said power generating station at the mouth of Provo Canyon and there utilize the same for generating electrical energy, including all the water which the plaintiff should have the right to flow past the said dam in Provo Canyon to the intake of plaintiff's

canal in said Provo Canyon, and that said agreement is now owned and held by this defendant, and this defendant has been and is now entitled to have the use of said water of the plaintiff in manner and for the purposes as hereinbefore set forth and alleged, in accordance with the covenants and obligations of the plaintiff under its said contract.

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That the plaintiff and each of the other defendants herein, as this defendant is informed and believes, and therefore alleges the fact to be assert and set up some claim or interest adverse to the ownership, title, interests, and rights of this defendant to the use of the waters of said Provo River and its several sources, as claimed by this defendant herein, but this defendant has not sufficient knowledge or information to enable it to allege and set forth herein specifically the character or nature of said claims.

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This defendant further avers that the several assertions, claims, and interests of the plaintiff and of each and all of the other defendants made against this defendant are wrongful, without right, and unfounded in fact or law, and are a cloud upon this defendant's title and rights to the use, possession, ownership, and enjoyment of said waters.

WHEREFORE, This defendant prays judgment, that the plaintiff and each of the defendants may be required to set forth any and every adverse claim, interest or demand by them and each of them in or to said waters so claimed, owned and used by this defendant, to the end that their several adverse claims, pretensions and demands may be adjudicated and declared null and void as against this defendant, and that the title, ownership and interests therein of this defendant in and to said waters so claimed, owned and used by it as herein set forth may quieted and confirmed as against the plaintiff and each of the defendants, and the interest, title and ownership of this defendant therein, as herein set forth, may be adjudged to be good and valid.

This defendant prays for such other and further relief in the premises as to the court may seem just and equitable, and for its costs in this behalf expended.

*R. A. Milton, Reice Critchlow
& Barry and E. E.*

Attorneys for defendant, Utah Power &
Light Company.

STATE OF UTAH)
COUNTY OF SALT LAKE) SS.

S. R. Inch, having been first duly sworn on
oath says: I am an officer of the Utah Power & Light Company, defendant
herein, to wit General Superintendent thereof:

That I have read the above and foregoing answer, counterclaim,
and cross-complaint and know the contents thereof; that the same are
true of my own knowledge except as to the matters therein alleged on
information and belief and as to those matters I believe them to be true.

S. R. Inch

Subscribed and sworn to before me the 5th
^{September}
day of ~~August~~, A. D. 1914.



Harold H. Burton
Notary Public.

My Commission Expires August 18, 1918.

I in service of Copy of above answer ad-
mitted this 7 day of November, 1914

A. C. Hatch

A. J. Evans

Edgar Evans

Alfred L. Booth

Attys for Plaintiff

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In the South Judicial
District of California,
County of Santa Clara.

Power Transmission Company,
a corporation, Plaintiff

vs.
Power Line, et al.
Defendants.

James A. McArthur
John A. McArthur
James A. McArthur

IN DIST COURT
STATE OF CALIF.
SANTA CLARA CO.